

Jim Doyle  
Governor

Helene Nelson  
Secretary



**State of Wisconsin**

**Department of Health and Family Services**

**DIVISION OF DISABILITY AND ELDER SERVICES**

BUREAU OF QUALITY ASSURANCE  
2917 INTERNATIONAL LANE, SUITE 300  
MADISON WI 53704

Telephone: 608-243-2024  
FAX: 608-243-2045  
[www.dhfs.state.wi.us](http://www.dhfs.state.wi.us)

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**TO:** Hospitals

**HOSP - 06**

**FROM:** Jane Walters, Section Chief, HSS  
Bureau of Quality Assurance

**via:** Susan Schroeder, Director  
Bureau of Quality Assurance

**HOSPITAL RESPONSIBILITY & PHYSICIAN PRACTICE**

The Bureau of Quality Assurance (BQA) enforces the state administrative code governing hospitals, Chapter HFS 124, and is the State Agency with whom the Centers for Medicare and Medicaid Services (CMS) contracts for enforcement of Medicare regulations governing hospitals. CMS directs BQA to conduct random validation full surveys in accredited hospitals; CMS also directs BQA to conduct surveys focusing on specific complaints in accredited hospitals that, if substantiated, could be a violation of a federal Condition of Participation for Medicare.

BQA has noted an increase in the number of persons who contact BQA, after having contacted a hospital about dissatisfaction with physician services, and report that a hospital representative told them that the physician was an "independent contractor." Some complainants then inferred, and others have reported being told, that the hospital did not have control of or responsibility for the physician's actions. Some have reported having been referred to the physician's practice or employing clinic to file a complaint. These complainants also frequently report that they received no written response from the hospital regarding their complaint or grievance.

Hospitals are reminded that in both state and federal regulations, the hospital has responsibility for the quality of medical care provided in their hospital. Medical staff members must apply for privileges to practice in hospitals and be approved for these privileges by the governing body of the hospital. This contractual relationship includes the hospital's responsibility for quality assessment and performance improvement, as specifically referenced in the new Medicare Condition of Participation found at 42 CFR 482.21:

The hospital must develop, implement, and maintain an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement program.

The hospital's governing body must ensure that the program reflects the complexity of the hospital's organization and services; involves all hospital department and services (including those services furnished under contract or arrangement); and focuses on indicators related to improved health outcomes and the prevention and reduction of medical errors.

The hospital must maintain and demonstrate evidence of its QAPI program for review by CMS.

Chapter HFS 124.12(2) requires that:

The hospital shall have a medical staff organized under by-laws approved by the governing body. The medical staff shall be responsible to the governing body of the hospital for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.

The provision at HFS 124.12(4)(c) 4 allowing "temporary staff privileges may be granted for a limited period if the individual is otherwise properly qualified for membership on the medical staff" does not suspend the hospital's responsibilities for the ethical and professional practice of medicine in the facility.

Federally, regulations at 42 CFR 482.12(a)(5) require that the governing body must "ensure that the medical staff is accountable to the governing body for the quality of care provided to patients." Federal regulations specifically address services provided under contract, which includes physician services provided under contract, at 42 CFR 482.12(e):

The governing body must be responsible for services furnished in the hospital whether or not they are furnished under contracts. The governing body must ensure that a contractor of services (including one for shared services and joint ventures) furnishes services that permit the hospital to comply with all applicable conditions of participation and standards for the contracted services.

Hospitals are also reminded that federal regulations at 42 CFR 482.13 (a) 2 regarding patient rights require the hospital to respond to patient complaints and grievances in writing:

In its resolution of the grievance, the hospital must provide the patient with written notice of its decision that contains the name of the hospital contact person, the steps taken on behalf of the patient to investigate the grievance, the results of the grievance process, and the date of completion.

Please share the information contained in this memo with your medical staff and all hospital staff who receive complaints or grievances from hospital patients. Also, please review your hospital's policies and procedures relating to patient complaints about physician care. Thank you for your prompt attention to this important matter.